

EXHIBIT A

**STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE**

**BENJAMIN W. CLIFF,
375 Maryland Street, Upper
Buffalo, New York 14201**

Plaintiff,

SUMMONS

vs.

Index No.

**JACOB GARCIA,
6419 Holloman Brook Court
Plant City, Florida 22565**

**BASIC CONCEPTS, INC.,
1904 Industrial Park Dr.
Plant City, Florida 33566**

Defendants.

TO THE ABOVE NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED AND REQUIRED to serve upon the Plaintiff's attorneys, at the address stated below, a written Answer to the attached Complaint.

If this Summons is served upon you within the State of New York by personal service you must respond within twenty (20) days after service, not counting the day of service. If this Summons is not personally delivered to you within the State of New York, you must respond within thirty (30) days after service is complete, as provided by law.

If you do not respond to the attached Complaint within the applicable time limitation stated above a Judgment will be entered against you, by default for the relief demanded in the Complaint, without further notice to you.

This action is brought in the County of Erie because it is the Plaintiff's County of residence.

DATED: Buffalo, New York
June 23, 2020



Lee J. Fabiatos, Esq.
O'Brien & Ford, P.C.
Attorneys for Plaintiff
4549 Main Street, Suite 201
Buffalo, New York 14226
TEL: (716) 907-7777

**STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE**

BENJAMIN W. CLIFF,

Plaintiff,

vs.

COMPLAINT

Index No.

JACOB GARCIA,

BASIC CONCEPTS, INC.,

Defendants.

Plaintiff, Benjamin W. Cliff, by his attorneys, O'Brien & Ford, P.C., as and for her Complaint against the Defendant Jacob Garcia and Defendant Basic Concepts, Inc. (hereinafter referenced as "Defendants"), hereby states and alleges:

1. At all times hereinafter referenced, Plaintiff Benjamin W. Cliff was and is a resident of the County of Erie and State of New York.
2. Upon information and belief, and at all times hereinafter referenced, Defendant Jacob Garcia was and is a resident of the County of Hillsborough and State of Florida.
3. Upon information and belief, and at all times hereinafter referenced, Defendant Basic Concepts Inc., was and is a foreign corporation with a principal place of business in the State of Florida, and was and is authorized to do business within the State of New York and was and is doing business within the State of New York.
4. The Plaintiff Benjamin W. Cliff was at all times hereinafter referenced using due care.

5. On or about August 13, 2019, at approximately 6:51 p.m., and at all times hereinafter referenced, Plaintiff Benjamin W. Cliff was a bicyclist on Elmwood Avenue at, near, or around the driveway located at 224 Elmwood Avenue in the City of Buffalo and State of New York.

6. On or about August 13, 2019, and at all times hereinafter referenced, Defendant Basic Concepts, Inc. was the owner of a 2016 Ford motor vehicle bearing Florida State license plate number KSY619.

7. At that same time, date and location, and at all times hereinafter referenced, Defendant Jacob Garcia was operating the aforementioned Ford motor vehicle owned by Defendant Basic Concepts, Inc. with the expressed and/or implied permission of the Defendant Basic Concepts, Inc.

8. At that same time, date and location, and at all times hereinafter referenced, Defendant Jacob Garcia was operating the aforementioned Ford motor vehicle on Elmwood Avenue at, near, or around the driveway located at 224 Elmwood Avenue in the City of Buffalo, County of Erie and State of New York.

9. As a result of the negligence of the Defendants, the aforementioned Ford motor vehicle operated by Jacob Garcia collided with Plaintiff Benjamin W. Cliff

10. As a result of the negligence of the Defendants, Plaintiff Benjamin W. Cliff was injured.

11. As a result of the negligence of the Defendants, Plaintiff Benjamin W. Cliff sustained a serious injury as defined by Article 51 of the Insurance Law of the State of New York.

12. As a result of the negligence of the Defendants, and as a result of the aforementioned injuries, Plaintiff Benjamin W. Cliff incurred medical expenses and upon information and belief, will continue to incur medical expenses.

13. As a result of the negligence of the Defendants, Plaintiff Benjamin W. Cliff sustained pain and suffering from his injuries and upon information and belief, will continue to sustain pain and suffering.

14. As a result of the negligence of the Defendants, Plaintiff Benjamin W. Cliff was incapacitated from his profession and/or employment and will be incapacitated, either completely or partially, from her profession and/or employment in the future and therefore has been caused to sustain a loss in wages and other economic loss and will sustain, upon information and belief, a loss in wages and other economic loss in the future.

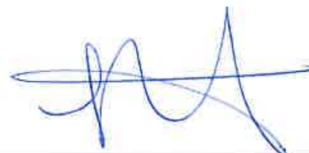
15. As a result of the negligence of the Defendants, Plaintiff Benjamin W. Cliff has or will sustain an economic loss greater than basic economic loss as defined in Article 51 of the New York State Insurance Law.

16. This action falls within one or more of the exceptions set forth in CPLR Section 1602.

17. As a result of the foregoing, Plaintiff have sustained damages in an amount which exceeds the jurisdictional limits of all Courts of lower jurisdiction.

WHEREFORE, Plaintiff Benjamin W. Cliff seeks judgment against the Defendant Jacob Garcia and Defendant Basic Concepts, Inc. in an amount which exceeds the jurisdictional limits of all Courts of lower jurisdiction, together with the costs and disbursements of this action and for such other and further relief as the Court deems just and proper.

DATED: Buffalo, New York
June 23, 2020



Lee J. Fabiatos, Esq.
O'Brien & Ford, P.C.
Attorneys for Plaintiff
4549 Main Street, Suite 201
Buffalo, New York 14226
TEL: (716) 907-7777

EXHIBIT B

O'BRIEN & FORD PC 4549 MAIN STREET, SUITE 201 BUFFALO, NY 14226

AFFIDAVIT OF SERVICE

Client's File No.:

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ERIE

Index Number: 806107/2020

Date Filed: June 23, 2020



Benjamin W. Cliff,

vs

Plaintiff(s)/Petitioner(s)

Jacob Garcia, et al.

Defendant(s)/Respondent(s)

STATE OF SOUTH CAROLINA, SS.:

The undersigned being duly sworn deposes and says: that deponent is not a party to this action, is over 18 years of age and resides in the State of South Carolina

That on the following date: 6/29/2020, at the following time: 1028 Am,

at 1310 Harris Bridge Road, Anderson, SC 29621 deponent served the within

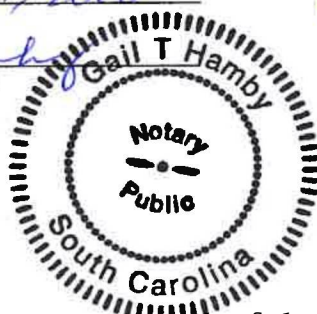
Summons and Complaint; Notice of Electronic Filing

☒ Papers so served were properly endorsed with the Index Number and date of filing.

Upon: Basic Concepts, Inc.

☐ Individual By delivering a true copy thereof to said recipient personally; deponent knew the person so served to be the individual described therein.☐ Responsible Person By delivering to and leaving with _____, Relationship _____ a true copy thereof, a person of suitable age and discretion. Said premises being the defendant / respondent's [] dwelling place [] place of business/employment [] last known address within the State. [] usual place of abode☐ Mail A copy thereof was deposited in a postpaid, properly addressed envelope, marked "Personal and Confidential" in a depository maintained by the U. S. P. S. and mailed to the above address on _____☒ Corporation LLC / LLP By delivering to and leaving with Steven Smith said individual to be Controller who specifically stated he/she was authorized to accept service on behalf of the Corporation/Government Agency/Entity.☐ Affixing To Door By affixing a true copy thereof to the door, being the defendant/respondent's [] dwelling place [] place of business/employment [] last known address within the State. [] usual place of abode☐ Previous Attempts Deponent previously attempted to serve the above named defendant/respondent on:
1) _____ at _____ 3) _____ at _____ 5) _____ at _____
2) _____ at _____ 4) _____ at _____ 6) _____ at _____Description of Recipient Sex: M Color of skin: W Color of hair: Gray Age: 60's Height: 5'8
Weight: 240 Other Features: glasses☐ Witness Fees advanced payment was made.☐ Military Service I asked the person spoken to whether the defendant/respondent was in active military service and received a negative reply. The person spoken with wore ordinary civilian clothes and no military uniform. The source of my information and the grounds of my belief are the conversations and observations defendant/respondent narrated above. Upon information and belief, I aver that the recipient is not in military service.☐ Other

Sworn to before me on July 1, 2020

Gail T Hamby
NOTARY PUBLIC

Misty Davis

PROCESS SERVER - PRINT NAME BELOW SIGNATURE

Misty Davis

PROCESS SERVER LICENSE #

Work Order # 2006307

EXHIBIT C

O'BRIEN & FORD PC 4549 MAIN STREET, SUITE 201 BUFFALO, NY 14226

AFFIDAVIT OF SERVICE

Client's File No.: _____

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ERIE

Index Number: 806107/2020

Date Filed: June 23, 2020



Benjamin W. Cliff,

vs

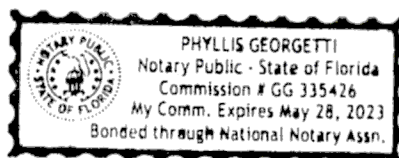
Plaintiff(s)/Petitioner(s)

Jacob Garcia, et al.

Defendant(s)/Respondent(s)

STATE OF FLORIDA, SS.:

The undersigned being duly sworn deposes and says: that deponent is not a party to this action, is over 18 years of age and resides in the State of Florida

That on the following date: 08/10/2020, at the following time: 5:27 pm,
at 602 E. Alexander Street, Apt. 406, Plant City, FL 33563 deponent served the within
Summons and Complaint; Notice of Electronic Filing☒ Papers so served were properly endorsed with the Index Number and date of filing.Upon: Jacob Garcia☒ Individual By delivering a true copy thereof to said recipient personally; deponent knew the person so served to be the individual described therein.☐ Responsible Person By delivering to and leaving with _____, _____ Relationship
a true copy thereof, a person of suitable age and discretion. Said premises being the defendant / respondent's
[] dwelling place [] place of business/employment [] last known address within the State. [] usual place of abode☐ Mail A copy thereof was deposited in a postpaid, properly addressed envelope, marked "Personal and Confidential" in a depository maintained by the U. S. P. S. and mailed to the above address on _____.☐ Corporation LLC / LLP By delivering to and leaving with _____ said individual to be
who specifically stated he/she was authorized to accept service on behalf of the Corporation/Government Agency/Entity.☐ Affixing To Door By affixing a true copy thereof to the door, being the defendant/respondent's [] dwelling place [] place of business/employment
[] last known address within the State. [] usual place of abode☒ Previous Attempts Deponent previously attempted to serve the above named defendant/respondent on:
1) 06/25/2020 at 2:30 pm 3) _____ at _____ 5) _____ at _____
2) 07/21/2020 at 5:30 pm 4) _____ at _____ 6) _____ at _____Description of Recipient Sex: M Color of skin: W Color of hair: Brown Age: 20's Height: 5'7"
Weight: 140 lbs Other Features: Long Hair with dreadlocks☐ Witness Fees advanced payment was made.☒ Military Service I asked the person spoken to whether the defendant/respondent was in active military service and received a negative reply. The person spoken with wore ordinary civilian clothes and no military uniform. The source of my information and the grounds of my belief are the conversations and observations defendant/respondent narrated above. Upon information and belief, I aver that the recipient is not in military service.☒ Other Mr. Garcia was in Texas working. He was served upon his return home.Sworn to before me on 8-11-2020Phyllis George
NOTARY PUBLICJ. Schum
PROCESS SERVER - (PRINT NAME BELOW SIGNATURE)PROCESS SERVER LICENSE # CPS-14781796

Work Order # 2006254

EXHIBIT D

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ERIE

BENJAMIN W. CLIFF,

Plaintiff,

INDEX NO.: 806107/2020

v.

ANSWER

JACOB GARCIA and BASIC CONCEPTS, INC.,

Defendants.

Defendant Basic Concepts, Inc., by and through its attorneys, GERBER CIANO KELLY & BRADY LLP, as and for their Answer Plaintiff's Complaint allege as follows:

1. Defendant lacks knowledge and information sufficient to form a belief as to the allegation(s) contained in Paragraph 1 of the Plaintiff's Complaint.

2. Defendant lacks knowledge and information sufficient to form a belief as to the allegation(s) contained in Paragraph 2 of the Plaintiff's Complaint.

3. Defendant admits the allegation(s) contained in Paragraph 3 of the Plaintiff's Complaint.

4. Defendant lacks knowledge and information sufficient to form a belief as to the allegation(s) contained in Paragraph 4 of the Plaintiff's Complaint.

5. Defendant lacks knowledge and information sufficient to form a belief as to the allegation(s) contained in Paragraph 5 of the Plaintiff's Complaint.

6. Defendant lacks knowledge and information sufficient to form a belief as to the allegation(s) contained in Paragraph 6 of the Plaintiff's Complaint.

7. Defendant lacks knowledge and information sufficient to form a belief as to the allegation(s) contained in Paragraph 7 of the Plaintiff's Complaint.

8. Defendant lacks knowledge and information sufficient to form a belief as to the allegation(s) contained in Paragraph 8 of the Plaintiff's Complaint.

9. Defendant denies the allegation(s) contained in Paragraph 9 of Plaintiff's Complaint.

10. Defendant denies the allegation(s) contained in Paragraph 10 of Plaintiff's Complaint.

11. Defendant denies the allegation(s) of negligence contained in Paragraph 11 of Plaintiff's Complaint and lacks knowledge and information to form a belief as to the remaining allegations.

12. Defendant denies the allegation(s) of negligence contained in Paragraph 12 of Plaintiff's Complaint and lacks knowledge and information to form a belief as to the remaining allegations.

13. Defendant denies the allegation(s) of negligence contained in Paragraph 13 of Plaintiff's Complaint and lacks knowledge and information to form a belief as to the remaining allegations.

14. Defendant denies the allegation(s) of negligence contained in Paragraph 14 of Plaintiff's Complaint and lacks knowledge and information to form a belief as to the remaining allegations.

15. Defendant denies the allegation(s) of negligence contained in Paragraph 15 of Plaintiff's Complaint and lacks knowledge and information to form a belief as to the remaining allegations.

16. Defendants lack knowledge and information sufficient to form a belief as to the allegation(s) in Paragraph 16.

17. Defendants lack knowledge and information sufficient to form a belief as to the allegation(s) in Paragraph 17.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

18. The accident or occurrence referred to in Plaintiff's Complaint and the injuries claimed in the Complaint were caused in whole, or in part by the culpable conduct of the plaintiff, including but not limited to carelessness, contributory negligence or assumption of risk of any and all consequences of an activity voluntarily and freely undertaken, without any negligence on the part of the Defendant and as a result of which said claims are therefore barred or diminished in the proportion that such culpable conduct of the Plaintiff bears to the total culpable conduct causing the alleged injuries and/or damages.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

19. The answering Defendant, pursuant to §§1411, 1412 and other applicable provisions of the Civil Practice Law and Rules, allege that if Plaintiff sustained damages as alleged in Plaintiff's Complaint, such damages were caused in whole or in part by the culpable conduct, contributory negligence, want of care and assumption of risk on the part of the plaintiffs, and without any culpable conduct, negligence, fault or want of care on the part of the Defendant. Defendant pleads said culpable conduct and negligence of Plaintiff, in diminution of any damages that may be found in this action in proportion to Plaintiff's culpable conduct.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

20. Upon information and belief, the Plaintiff's economic losses, if any, as specified in CPLR 4545 were replaced and/or indemnified in whole or in part from collateral sources and the Defendant is entitled to have the Court consider the same in determining such damages as provided in CPLR 4545.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

21. That if at the time of trial any of the issues herein have been finally determined against the Plaintiff by a Tribunal, Forum or Court, all of competent jurisdiction, then, in that event, Plaintiff will be estopped from re-litigating said issues.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

22. Upon information and belief, Plaintiff's conduct was proximate cause of the alleged incident which is the subject of this action.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

23. Responding Defendant lacked notice of the condition or conditions alleged.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

24. Defendant did not create the condition which is alleged to have caused Plaintiff's accident.

AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE

25. The incident complained of was caused by third parties over whom the Defendant had no control.

AS AND FOR A NINTH AFFIRMATIVE DEFENSE

26. Plaintiff failed to implead all necessary parties.

AS AND FOR A TENTH AFFIRMATIVE DEFENSE

27. Defendant did not create the condition(s) which is alleged to have caused Plaintiff's accident.

AS AND FOR AN ELEVENTH AFFIRMATIVE DEFENSE

28. Plaintiff failed to mitigate damages in this matter. The amount of damages Plaintiff is entitled to recover, if any, must be reduced due to Plaintiff's failure to mitigate damages.

AS AND FOR A TWELFTH AFFIRMATIVE DEFENSE

29. The damages allegedly sustained by Plaintiff was not proximately caused by any negligence or culpable conduct on the part of Defendant.

AS AND FOR A THIRTEENTH AFFIRMATIVE DEFENSE

30. Any of the acts or omissions, allegedly committed by Defendant do not constitute negligence or substantial causes or factors of Plaintiff's alleged injuries, and/or did not result in any injuries and/or damages as alleged by plaintiffs or in any way increase the risk of harm to the Plaintiff.

AS AND FOR A FOURTEENTH AFFIRMATIVE DEFENSE

31. The Plaintiff fails to state a claim upon which relief may be granted.

AS AND FOR A FIFTEENTH AFFIRMATIVE DEFENSE

32. In the event that the Plaintiff is found to have been a general or special employee of the Defendant, then this action is barred by the exclusive remedy provisions of Sections 11 and 29(6) of the Workers Compensation Law.

AS AND FOR A SIXTEENTH AFFIRMATIVE DEFENSE

33. The incident complained of was caused by third parties over whom the Defendant had no control.

AS AND FOR A SEVENTEENTH AFFIRMATIVE DEFENSE

34. Defendant reserves its right to assert any additional affirmative defenses as may be appropriate based upon the facts or issues disclosed during the course of additional investigation and discovery.

WHEREFORE, the Defendant demands judgment dismissing the Complaint against it, together with costs and disbursements of this action and attorney fees and all other relief the Court sees to provide.

DATED: August 3, 2020
Buffalo, New York

GERBER CIANO KELLY BRADY LLP

s/Aaron J. Aisen

Aaron J. Aisen, Esq.
Attorney for Defendants
2400 Main Place Tower
350 Main Street
Buffalo, New York 14202
(716) 313-2767
aaisen@gerberciano.com

TO: Lee J. Fabiatos
O'Brien & Ford, P.C.
Attorneys for Plaintiff
4549 Main Street, Suite 201
Buffalo, New York 14226
Tel: (716) 907-7777

EXHIBIT E

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ERIE

BENJAMIN W. CLIFF,

Plaintiff,

INDEX NO.: 806107/2020

v.

AMENDED ANSWER

JACOB GARCIA and BASIC CONCEPTS, INC.,

Defendants.

Defendant Basic Concepts, Inc., by and through its attorneys, GERBER CIANO KELLY & BRADY LLP, as and for its Amended Answer to Plaintiff's Complaint, alleges as follows:

1. Defendant lacks knowledge and information sufficient to form a belief as to the allegation(s) contained in Paragraph 1 of the Plaintiff's Complaint.

2. Defendant lacks knowledge and information sufficient to form a belief as to the allegation(s) contained in Paragraph 2 of the Plaintiff's Complaint.

3. Defendant denies that its principal place of business is Florida. Defendant admits that its principal place of business is in South Carolina. Defendant lacks knowledge and information sufficient to form a belief as to the allegation(s) contained in Paragraph 3 of the Plaintiff's Complaint.

4. Defendant lacks knowledge and information sufficient to form a belief as to the allegation(s) contained in Paragraph 4 of the Plaintiff's Complaint.

5. Defendant lacks knowledge and information sufficient to form a belief as to the allegation(s) contained in Paragraph 5 of the Plaintiff's Complaint.

6. Defendant lacks knowledge and information sufficient to form a belief as to the allegation(s) contained in Paragraph 6 of the Plaintiff's Complaint.

7. Defendant lacks knowledge and information sufficient to form a belief as to the allegation(s) contained in Paragraph 7 of the Plaintiff's Complaint.

8. Defendant lacks knowledge and information sufficient to form a belief as to the allegation(s) contained in Paragraph 8 of the Plaintiff's Complaint.

9. Defendant denies the allegation(s) of negligence contained in Paragraph 9 of Plaintiff's Complaint and lacks knowledge and information to form a belief as to the remaining allegation(s) in Paragraph 9.

10. Defendant denies the allegation(s) of negligence contained in Paragraph 10 of Plaintiff's Complaint and lacks knowledge and information to form a belief as to the remaining allegation(s) in Paragraph 10.

11. Defendant denies the allegation(s) of negligence contained in Paragraph 11 of Plaintiff's Complaint and lacks knowledge and information to form a belief as to the remaining allegation(s) in Paragraph 11.

12. Defendant denies the allegation(s) of negligence contained in Paragraph 12 of Plaintiff's Complaint and lacks knowledge and information to form a belief as to the remaining allegation(s) in Paragraph 12.

13. Defendant denies the allegation(s) of negligence contained in Paragraph 13 of Plaintiff's Complaint and lacks knowledge and information to form a belief as to the remaining allegation(s) in Paragraph 13.

14. Defendant denies the allegation(s) of negligence contained in Paragraph 14 of Plaintiff's Complaint and lacks knowledge and information to form a belief as to the remaining allegation(s) in Paragraph 14.

15. Defendant denies the allegation(s) of negligence contained in Paragraph 15 of Plaintiff's Complaint and lacks knowledge and information to form a belief as to the remaining allegation(s) in Paragraph 15.

16. Defendants lack knowledge and information sufficient to form a belief as to the allegation(s) in Paragraph 16.

17. Defendants lack knowledge and information sufficient to form a belief as to the allegation(s) in Paragraph 17.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

18. The accident or occurrence referred to in Plaintiff's Complaint and the injuries claimed in the Complaint were caused in whole, or in part by the culpable conduct of the Plaintiff, including but not limited to carelessness, contributory negligence or assumption of risk of any and all consequences of an activity voluntarily and freely undertaken, without any negligence on the part of the Defendant and as a result of which said claims are therefore barred or diminished in the proportion that such culpable conduct of the Plaintiff bears to the total culpable conduct causing the alleged injuries and/or damages.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

19. The answering Defendant, pursuant to §§1411, 1412 and other applicable provisions of the Civil Practice Law and Rules, allege that if Plaintiff sustained damages as alleged in Plaintiff's Complaint, such damages were caused in whole or in part by the culpable conduct, contributory negligence, want of care and assumption of risk on the part of the plaintiffs, and without any culpable conduct, negligence, fault or want of care on the part of the Defendant. Defendant pleads said culpable conduct and negligence of Plaintiff, in diminution of any damages that may be found in this action in proportion to Plaintiff's culpable conduct.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

20. Upon information and belief, the Plaintiff's economic losses, if any, as specified in CPLR 4545 were replaced and/or indemnified in whole or in part from collateral sources and the Defendant is entitled to have the Court consider the same in determining such damages as provided in CPLR 4545.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

21. That if at the time of trial any of the issues herein have been finally determined against the Plaintiff by a Tribunal, Forum or Court, all of competent jurisdiction, then, in that event, Plaintiff will be estopped from re-litigating said issues.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

22. Upon information and belief, Plaintiff's conduct was proximate cause of the alleged incident which is the subject of this action.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

23. Responding Defendant lacked notice of the condition or conditions alleged.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

24. Defendant did not create the condition which is alleged to have caused Plaintiff's accident.

AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE

25. The incident complained of was caused by third parties over whom the Defendant had no control.

AS AND FOR A NINTH AFFIRMATIVE DEFENSE

26. Plaintiff failed to implead all necessary parties.

AS AND FOR A TENTH AFFIRMATIVE DEFENSE

27. Defendant did not create the condition(s) which is alleged to have caused Plaintiff's accident.

AS AND FOR AN ELEVENTH AFFIRMATIVE DEFENSE

28. Plaintiff failed to mitigate damages in this matter. The amount of damages Plaintiff is entitled to recover, if any, must be reduced due to Plaintiff's failure to mitigate damages.

AS AND FOR A TWELFTH AFFIRMATIVE DEFENSE

29. The damages allegedly sustained by Plaintiff was not proximately caused by any negligence or culpable conduct on the part of Defendant.

AS AND FOR A THIRTEENTH AFFIRMATIVE DEFENSE

30. Any of the acts or omissions, allegedly committed by Defendant do not constitute negligence or substantial causes or factors of Plaintiff's alleged injuries, and/or did not result in any injuries and/or damages as alleged by plaintiffs or in any way increase the risk of harm to the Plaintiff.

AS AND FOR A FOURTEENTH AFFIRMATIVE DEFENSE

31. The Plaintiff fails to state a claim upon which relief may be granted.

AS AND FOR A FIFTEENTH AFFIRMATIVE DEFENSE

32. In the event that the Plaintiff is found to have been a general or special employee of the Defendant, then this action is barred by the exclusive remedy provisions of Sections 11 and 29(6) of the Workers Compensation Law.

AS AND FOR A SIXTEENTH AFFIRMATIVE DEFENSE

33. The incident complained of was caused by third parties over whom the Defendant had no control.

AS AND FOR A SEVENTEENTH AFFIRMATIVE DEFENSE

34. Defendant reserves its right to assert any additional affirmative defenses as may be appropriate based upon the facts or issues disclosed during the course of additional investigation and discovery.

AS AND FOR AN EIGHTEEN AFFIRMATIVE DEFENSE

35. The applicable statute of limitations bars plaintiff's claims in whole or in part.

WHEREFORE, the Defendant demands judgment dismissing the Complaint against it, together with costs and disbursements of this action, and such and other further relief as this Court may deem just and proper.

DATED: August 14, 2020
Buffalo, New York

GERBER CIANO KELLY BRADY LLP

s/Aaron J. Aisen

Aaron J. Aisen, Esq.
Attorney for Defendants
2400 Main Place Tower
350 Main Street
Buffalo, New York 14202
(716) 313-2767
aaisen@gerberciano.com

TO: Lee J. Fabiatos
O'Brien & Ford, P.C.
Attorneys for Plaintiff
4549 Main Street, Suite 201
Buffalo, New York 14226
Tel: (716) 907-7777

EXHIBIT F

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ERIE

BENJAMIN W. CLIFF,

Plaintiff,

INDEX NO.: 806107/2020

v.

ANSWER

JACOB GARCIA and BASIC CONCEPTS, INC.,

Defendants.

Defendant Jacob Garcia ("Defendant"), by and through his attorneys, GERBER CIANO KELLY & BRADY LLP, as and for his Answer to Plaintiff's Complaint, alleges as follows:

1. Defendant lacks knowledge and information sufficient to form a belief as to the allegation(s) contained in Paragraph 1 of the Plaintiff's Complaint.
2. Defendant admits the allegation(s) contained in Paragraph 2 of the Plaintiff's Complaint.
3. Defendant lacks knowledge and information sufficient to form a belief a as to the allegation(s) contained in Paragraph 5 of the Plaintiff's Complaint.
4. Defendant lacks knowledge and information sufficient to form a belief as to the allegation(s) contained in Paragraph 4 of the Plaintiff's Complaint.
5. Defendant lacks knowledge and information sufficient to form a belief as to the allegation(s) contained in Paragraph 5 of the Plaintiff's Complaint.
6. Defendant lacks knowledge and information sufficient to form a belief as to the allegation(s) contained in Paragraph 6 of the Plaintiff's Complaint.
7. Defendant lacks knowledge and information sufficient to form a belief as to the allegation(s) contained in Paragraph 7 of the Plaintiff's Complaint.

8. Defendant lacks knowledge and information sufficient to form a belief as to the allegation(s) contained in Paragraph 8 of the Plaintiff's Complaint.

9. Defendant denies the allegation(s) of negligence contained in Paragraph 9 of Plaintiff's Complaint and lacks knowledge and information to form a belief as to the remaining allegation(s) in Paragraph 9.

10. Defendant denies the allegation(s) of negligence contained in Paragraph 10 of Plaintiff's Complaint and lacks knowledge and information to form a belief as to the remaining allegation(s) in Paragraph 10.

11. Defendant denies the allegation(s) of negligence contained in Paragraph 11 of Plaintiff's Complaint and lacks knowledge and information to form a belief as to the remaining allegation(s) in Paragraph 11.

12. Defendant denies the allegation(s) of negligence contained in Paragraph 12 of Plaintiff's Complaint and lacks knowledge and information to form a belief as to the remaining allegation(s) in Paragraph 12.

13. Defendant denies the allegation(s) of negligence contained in Paragraph 13 of Plaintiff's Complaint and lacks knowledge and information to form a belief as to the remaining allegation(s) in Paragraph 13.

14. Defendant denies the allegation(s) of negligence contained in Paragraph 14 of Plaintiff's Complaint and lacks knowledge and information to form a belief as to the remaining allegation(s) in Paragraph 14.

15. Defendant denies the allegation(s) of negligence contained in Paragraph 15 of Plaintiff's Complaint and lacks knowledge and information to form a belief as to the remaining allegation(s) in Paragraph 15.

16. Defendants lack knowledge and information sufficient to form a belief as to the allegation(s) in Paragraph 16.

17. Defendants lack knowledge and information sufficient to form a belief as to the allegation(s) in Paragraph 17.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

18. The accident or occurrence referred to in Plaintiff's Complaint and the injuries claimed in the Complaint were caused in whole, or in part by the culpable conduct of the Plaintiff, including but not limited to carelessness, contributory negligence or assumption of risk of any and all consequences of an activity voluntarily and freely undertaken, without any negligence on the part of the Defendant and as a result of which said claims are therefore barred or diminished in the proportion that such culpable conduct of the Plaintiff bears to the total culpable conduct causing the alleged injuries and/or damages.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

19. The answering Defendant, pursuant to §§1411, 1412 and other applicable provisions of the Civil Practice Law and Rules, allege that if Plaintiff sustained damages as alleged in Plaintiff's Complaint, such damages were caused in whole or in part by the culpable conduct, contributory negligence, want of care and assumption of risk on the part of the plaintiffs, and without any culpable conduct, negligence, fault or want of care on the part of the Defendant. Defendant pleads said culpable conduct and negligence of Plaintiff, in diminution of any damages that may be found in this action in proportion to Plaintiff's culpable conduct.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

20. Upon information and belief, the Plaintiff's economic losses, if any, as specified in CPLR 4545 were replaced and/or indemnified in whole or in part from collateral sources and the

Defendant is entitled to have the Court consider the same in determining such damages as provided in CPLR 4545.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

21. That if at the time of trial any of the issues herein have been finally determined against the Plaintiff by a Tribunal, Forum or Court, all of competent jurisdiction, then, in that event, Plaintiff will be estopped from re-litigating said issues.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

22. Upon information and belief, Plaintiff's conduct was proximate cause of the alleged incident which is the subject of this action.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

23. Responding Defendant lacked notice of the condition or conditions alleged.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

24. Defendant did not create the condition which is alleged to have caused Plaintiff's accident.

AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE

25. The incident complained of was caused by third parties over whom the Defendant had no control.

AS AND FOR A NINTH AFFIRMATIVE DEFENSE

26. Plaintiff failed to implead all necessary parties.

AS AND FOR A TENTH AFFIRMATIVE DEFENSE

27. Defendant did not create the condition(s) which is alleged to have caused Plaintiff's accident.

AS AND FOR AN ELEVENTH AFFIRMATIVE DEFENSE

28. Plaintiff failed to mitigate damages in this matter. The amount of damages Plaintiff is entitled to recover, if any, must be reduced due to Plaintiff's failure to mitigate damages.

AS AND FOR A TWELFTH AFFIRMATIVE DEFENSE

29. The damages allegedly sustained by Plaintiff was not proximately caused by any negligence or culpable conduct on the part of Defendant.

AS AND FOR A THIRTEENTH AFFIRMATIVE DEFENSE

30. Any of the acts or omissions, allegedly committed by Defendant do not constitute negligence or substantial causes or factors of Plaintiff's alleged injuries, and/or did not result in any injuries and/or damages as alleged by plaintiffs or in any way increase the risk of harm to the Plaintiff.

AS AND FOR A FOURTEENTH AFFIRMATIVE DEFENSE

31. The Plaintiff fails to state a claim upon which relief may be granted.

AS AND FOR A FIFTEENTH AFFIRMATIVE DEFENSE

32. In the event that the Plaintiff is found to have been a general or special employee of the Defendant, then this action is barred by the exclusive remedy provisions of Sections 11 and 29(6) of the Workers Compensation Law.

AS AND FOR A SIXTEENTH AFFIRMATIVE DEFENSE

33. The incident complained of was caused by third parties over whom the Defendant had no control.

AS AND FOR A SEVENTEENTH AFFIRMATIVE DEFENSE

34. Defendant reserves his right to assert any additional affirmative defenses as may be appropriate based upon the facts or issues disclosed during the course of additional investigation and discovery.

AS AND FOR AN EIGHTEEN AFFIRMATIVE DEFENSE

35. The applicable statute of limitations bars plaintiff's claims in whole or in part.

WHEREFORE, the Defendant demands judgment dismissing the Complaint against him, together with costs and disbursements of this action, and such and further relief as this Court may deem just and proper.

DATED: August 14, 2020
Buffalo, New York

GERBER CIANO KELLY BRADY LLP

s/Aaron J. Aisen

Aaron J. Aisen, Esq.
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EXHIBIT G

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ERIE

BENJAMIN W. CLIFF,

Plaintiff,

INDEX NO.: 806107/2020

v.

SECOND AMENDED ANSWER

JACOB GARCIA and BASIC CONCEPTS, INC.,

Defendants.

Defendant Basic Concepts, Inc. ("Defendant"), by and through its attorneys, GERBER CIANO KELLY & BRADY LLP, as and for its Second Amended Answer to Plaintiff's Complaint, alleges as follows:

1. Defendant denies knowledge and information sufficient to form a belief as to the allegation(s) contained in Paragraph 1 of the Plaintiff's Complaint.
2. Defendant denies knowledge and information sufficient to form a belief as to the allegation(s) contained in Paragraph 2 of the Plaintiff's Complaint.
3. Defendant denies that its principal place of business is Florida. Defendant admits that its principal place of business is in South Carolina. Defendant denies knowledge and information sufficient to form a belief as to the remaining allegation(s) contained in Paragraph 3 of the Plaintiff's Complaint.
4. Defendant denies knowledge and information sufficient to form a belief as to the allegation(s) contained in Paragraph 4 of the Plaintiff's Complaint.
5. Defendant denies knowledge and information sufficient to form a belief as to the allegation(s) contained in Paragraph 5 of the Plaintiff's Complaint.

6. Defendant denies knowledge and information sufficient to form a belief as to the allegation(s) contained in Paragraph 6 of the Plaintiff's Complaint.

7. Defendant denies knowledge and information sufficient to form a belief as to the allegation(s) contained in Paragraph 7 of the Plaintiff's Complaint.

8. Defendant denies knowledge and information sufficient to form a belief as to the allegation(s) contained in Paragraph 8 of the Plaintiff's Complaint.

9. Defendant denies the allegation(s) of negligence contained in Paragraph 9 of Plaintiff's Complaint and denies knowledge and information to form a belief as to the remaining allegation(s) in Paragraph 9 of the Plaintiff's Complaint.

10. Defendant denies the allegation(s) of negligence contained in Paragraph 10 of Plaintiff's Complaint and denies knowledge and information to form a belief as to the remaining allegation(s) in Paragraph 10 of the Plaintiff's Complaint.

11. Defendant denies the allegation(s) of negligence contained in Paragraph 11 of Plaintiff's Complaint and denies knowledge and information to form a belief as to the remaining allegation(s) in Paragraph 11 of the Plaintiff's Complaint.

12. Defendant denies the allegation(s) of negligence contained in Paragraph 12 of Plaintiff's Complaint and denies knowledge and information to form a belief as to the remaining allegation(s) in Paragraph 12 of the Plaintiff's Complaint.

13. Defendant denies the allegation(s) of negligence contained in Paragraph 13 of Plaintiff's Complaint and denies knowledge and information to form a belief as to the remaining allegation(s) in Paragraph 13 of the Plaintiff's Complaint..

14. Defendant denies the allegation(s) of negligence contained in Paragraph 14 of Plaintiff's Complaint and denies knowledge and information to form a belief as to the remaining allegation(s) in Paragraph 14 of the Plaintiff's Complaint.

15. Defendant denies the allegation(s) of negligence contained in Paragraph 15 of Plaintiff's Complaint and denies knowledge and information to form a belief as to the remaining allegation(s) in Paragraph 15 of the Plaintiff's Complaint.

16. Defendant denies knowledge and information sufficient to form a belief as to the allegation(s) in Paragraph 16 of the Plaintiff's Complaint.

17. Defendant lacks knowledge and information sufficient to form a belief as to the allegation(s) in Paragraph 17 of the Plaintiff's Complaint.

18. Defendant denies each and every allegation not hereinbefore admitted, denied, or denied for lack of knowledge or information.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

19. The accident or occurrence referred to in Plaintiff's Complaint and the injuries claimed in the Complaint were caused in whole, or in part by the culpable conduct of the Plaintiff, including but not limited to carelessness, contributory negligence or assumption of risk of any and all consequences of an activity voluntarily and freely undertaken, without any negligence on the part of the Defendant and as a result of which said claims are therefore barred or diminished in the proportion that such culpable conduct of the Plaintiff bears to the total culpable conduct causing the alleged injuries and/or damages.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

20. The answering Defendant, pursuant to §§1411, 1412 and other applicable provisions of the Civil Practice Law and Rules, allege that if Plaintiff sustained damages as alleged

in Plaintiff's Complaint, such damages were caused in whole or in part by the culpable conduct, contributory negligence, want of care and assumption of risk on the part of the plaintiffs, and without any culpable conduct, negligence, fault or want of care on the part of the Defendant. Defendant pleads said culpable conduct and negligence of Plaintiff, in diminution of any damages that may be found in this action in proportion to Plaintiff's culpable conduct.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

21. Upon information and belief, the Plaintiff's economic losses, if any, as specified in CPLR 4545 were replaced and/or indemnified in whole or in part from collateral sources and the Defendant is entitled to have the Court consider the same in determining such damages as provided in CPLR 4545.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

22. That if at the time of trial any of the issues herein have been finally determined against the Plaintiff by a Tribunal, Forum or Court, all of competent jurisdiction, then, in that event, Plaintiff will be estopped from re-litigating said issues.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

23. Upon information and belief, Plaintiff's conduct was proximate cause of the alleged incident which is the subject of this action.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

24. Responding Defendant lacked notice of the condition or conditions alleged.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

25. Defendant did not create the condition which is alleged to have caused Plaintiff's accident.

AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE

26. The incident complained of was caused by third parties over whom the Defendant had no control.

AS AND FOR A NINTH AFFIRMATIVE DEFENSE

27. Plaintiff failed to implead all necessary parties.

AS AND FOR A TENTH AFFIRMATIVE DEFENSE

28. Plaintiff's alleged injuries do not constitute "serious injury" as defined under New York Insurance Law § 5102.

AS AND FOR AN ELEVENTH AFFIRMATIVE DEFENSE

29. Plaintiff failed to mitigate or otherwise act to lessen or reduce the injuries/damages in this matter. The amount of damages Plaintiff is entitled to recover, if any, must be reduced due to Plaintiff's failure to mitigate damages.

AS AND FOR A TWELFTH AFFIRMATIVE DEFENSE

30. The damages allegedly sustained by Plaintiff was not proximately caused by any negligence or culpable conduct on the part of Defendant.

AS AND FOR A THIRTEENTH AFFIRMATIVE DEFENSE

31. Any of the acts or omissions, allegedly committed by Defendant do not constitute negligence or substantial causes or factors of Plaintiff's alleged injuries, and/or did not result in any injuries and/or damages as alleged by plaintiffs or in any way increase the risk of harm to the Plaintiff.

AS AND FOR A FOURTEENTH AFFIRMATIVE DEFENSE

32. The Plaintiff fails to state a claim upon which relief may be granted.

AS AND FOR A FIFTEENTH AFFIRMATIVE DEFENSE

33. In the event that the Plaintiff is found to have been a general or special employee of the Defendant, then this action is barred by the exclusive remedy provisions of Sections 11 and 29(6) of the Workers Compensation Law.

AS AND FOR A SIXTEENTH AFFIRMATIVE DEFENSE

34. The incident complained of was caused by third parties over whom the Defendant had no control.

AS AND FOR A SEVENTEENTH AFFIRMATIVE DEFENSE

35. The applicable statute of limitations bars Plaintiff's claims in whole or in part.

AS AND FOR AN EIGHTEEN AFFIRMATIVE DEFENSE

36. Defendant reserves its right to assert any additional affirmative defenses as may be appropriate based upon the facts or issues disclosed during the course of additional investigation and discovery.

WHEREFORE, the Defendant respectfully demands judgment against the Plaintiff dismissing the Complaint herein with costs or, in the alternative, if the Complaint shall not be dismissed the amount of damages otherwise recoverable against said Defendant shall be diminished in the proportion which the culpable conduct attributable to the Plaintiff bears to the culpable conduct, if any, of the Defendant together with the costs and disbursements of this action.

DATED: November 3, 2020
Buffalo, New York

GERBER CIANO KELLY BRADY LLP

s/Aaron J. Aisen

Aaron J. Aisen, Esq.
Attorney for Defendant Basic Concepts, Inc.
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EXHIBIT H

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ERIE

BENJAMIN W. CLIFF,

Plaintiff,

INDEX NO.: 806107/2020

v.

AMENDED ANSWER

JACOB GARCIA and BASIC CONCEPTS, INC.,

Defendants.

Defendant Jacob Garcia ("Defendant"), by and through his attorneys, GERBER CIANO KELLY & BRADY LLP, as and for his Amended Answer to Plaintiff's Complaint, alleges as follows:

1. Defendant denies knowledge and information sufficient to form a belief as to the allegation(s) contained in Paragraph 1 of the Plaintiff's Complaint.
2. Defendant denies the allegation(s) contained in Paragraph 2 of the Plaintiff's Complaint.
3. Defendant denies knowledge and information sufficient to form a belief a as to the allegation(s) contained in Paragraph 3 of the Plaintiff's Complaint.
4. Defendant denies knowledge and information sufficient to form a belief as to the allegation(s) contained in Paragraph 4 of the Plaintiff's Complaint.
5. Defendant denies knowledge and information sufficient to form a belief as to the allegation(s) contained in Paragraph 5 of the Plaintiff's Complaint.
6. Defendant denies knowledge and information sufficient to form a belief as to the allegation(s) contained in Paragraph 6 of the Plaintiff's Complaint.

7. Defendant denies knowledge and information sufficient to form a belief as to the allegation(s) contained in Paragraph 7 of the Plaintiff's Complaint.

8. Defendant denies knowledge and information sufficient to form a belief as to the allegation(s) contained in Paragraph 8 of the Plaintiff's Complaint.

9. Defendant denies the allegation(s) of negligence contained in Paragraph 9 of Plaintiff's Complaint and denies knowledge and information to form a belief as to the remaining allegation(s) in Paragraph 9 of the Plaintiff's Complaint.

10. Defendant denies the allegation(s) of negligence contained in Paragraph 10 of Plaintiff's Complaint and denies knowledge and information to form a belief as to the remaining allegation(s) in Paragraph 10 of the Plaintiff's Complaint.

11. Defendant denies the allegation(s) of negligence contained in Paragraph 11 of Plaintiff's Complaint and denies knowledge and information to form a belief as to the remaining allegation(s) in Paragraph 11 of the Plaintiff's Complaint.

12. Defendant denies the allegation(s) of negligence contained in Paragraph 12 of Plaintiff's Complaint and denies knowledge and information to form a belief as to the remaining allegation(s) in Paragraph 12 of the Plaintiff's Complaint.

13. Defendant denies the allegation(s) of negligence contained in Paragraph 13 of Plaintiff's Complaint and denies knowledge and information to form a belief as to the remaining allegation(s) in Paragraph 13 of the Plaintiff's Complaint.

14. Defendant denies the allegation(s) of negligence contained in Paragraph 14 of Plaintiff's Complaint and denies knowledge and information to form a belief as to the remaining allegation(s) in Paragraph 14 of the Plaintiff's Complaint.

15. Defendant denies the allegation(s) of negligence contained in Paragraph 15 of Plaintiff's Complaint and denies knowledge and information to form a belief as to the remaining allegation(s) in Paragraph 15 of the Plaintiff's Complaint.

16. Defendant denies knowledge and information sufficient to form a belief as to the allegation(s) in Paragraph 16 of the Plaintiff's Complaint.

17. Defendant denies knowledge and information sufficient to form a belief as to the allegation(s) in Paragraph 17 of the Plaintiff's Complaint.

18. Defendant denies each and every allegation not hereinbefore admitted, denied, or denied for lack of knowledge or information.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

19. The accident or occurrence referred to in Plaintiff's Complaint and the injuries claimed in the Complaint were caused in whole, or in part by the culpable conduct of the Plaintiff, including but not limited to carelessness, contributory negligence or assumption of risk of any and all consequences of an activity voluntarily and freely undertaken, without any negligence on the part of the Defendant and as a result of which said claims are therefore barred or diminished in the proportion that such culpable conduct of the Plaintiff bears to the total culpable conduct causing the alleged injuries and/or damages.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

20. The answering Defendant, pursuant to §§1411, 1412 and other applicable provisions of the Civil Practice Law and Rules, allege that if Plaintiff sustained damages as alleged in Plaintiff's Complaint, such damages were caused in whole or in part by the culpable conduct, contributory negligence, want of care and assumption of risk on the part of the plaintiffs, and without any culpable conduct, negligence, fault or want of care on the part of the Defendant.

Defendant pleads said culpable conduct and negligence of Plaintiff, in diminution of any damages that may be found in this action in proportion to Plaintiff's culpable conduct.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

21. Upon information and belief, the Plaintiff's economic losses, if any, as specified in CPLR 4545 were replaced and/or indemnified in whole or in part from collateral sources and the Defendant is entitled to have the Court consider the same in determining such damages as provided in CPLR 4545.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

22. That if at the time of trial any of the issues herein have been finally determined against the Plaintiff by a Tribunal, Forum or Court, all of competent jurisdiction, then, in that event, Plaintiff will be estopped from re-litigating said issues.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

23. Upon information and belief, Plaintiff's conduct was proximate cause of the alleged incident which is the subject of this action.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

24. Responding Defendant lacked notice of the condition or conditions alleged.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

25. Defendant did not create the condition which is alleged to have caused Plaintiff's accident.

AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE

26. The incident complained of was caused by third parties over whom the Defendant had no control.

AS AND FOR A NINTH AFFIRMATIVE DEFENSE

27. Plaintiff failed to implead all necessary parties.

AS AND FOR A TENTH AFFIRMATIVE DEFENSE

28. Plaintiff's alleged injuries do not constitute "serious injury" as defined under New York Insurance Law § 5102.

AS AND FOR AN ELEVENTH AFFIRMATIVE DEFENSE

29. Plaintiff failed to mitigate damages in this matter. The amount of damages Plaintiff is entitled to recover, if any, must be reduced due to Plaintiff's failure to mitigate damages.

AS AND FOR A TWELFTH AFFIRMATIVE DEFENSE

30. The damages allegedly sustained by Plaintiff was not proximately caused by any negligence or culpable conduct on the part of Defendant.

AS AND FOR A THIRTEENTH AFFIRMATIVE DEFENSE

31. Any of the acts or omissions, allegedly committed by Defendant do not constitute negligence or substantial causes or factors of Plaintiff's alleged injuries, and/or did not result in any injuries and/or damages as alleged by plaintiffs or in any way increase the risk of harm to the Plaintiff.

AS AND FOR A FOURTEENTH AFFIRMATIVE DEFENSE

32. The Plaintiff fails to state a claim upon which relief may be granted.

AS AND FOR A FIFTEENTH AFFIRMATIVE DEFENSE

33. In the event that the Plaintiff is found to have been a general or special employee of the Defendant, then this action is barred by the exclusive remedy provisions of Sections 11 and 29(6) of the Workers Compensation Law.

AS AND FOR A SIXTEENTH AFFIRMATIVE DEFENSE

34. The incident complained of was caused by third parties over whom the Defendant had no control.

AS AND FOR A SEVENTEENTH AFFIRMATIVE DEFENSE

35. The applicable statute of limitations bars Plaintiff's claims in whole or in part.

AS AND FOR AN EIGHTEEN AFFIRMATIVE DEFENSE

36. Defendant reserves his right to assert any additional affirmative defenses as may be appropriate based upon the facts or issues disclosed during the course of additional investigation and discovery.

WHEREFORE, the Defendant respectfully demands judgment against the Plaintiff dismissing the Complaint herein with costs or, in the alternative, if the Complaint shall not be dismissed the amount of damages otherwise recoverable against said Defendant shall be diminished in the proportion which the culpable conduct attributable to the Plaintiff bears to the culpable conduct, if any, of the Defendant together with the costs and disbursements of this action.

DATED: November 3, 2020
Buffalo, New York

GERBER CIANO KELLY BRADY LLP

s/Aaron J. Aisen

Aaron J. Aisen, Esq.
Attorney for Defendant Jacob Garcia
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EXHIBIT I

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ERIE

BENJAMIN W. CLIFF,

Plaintiff,

v.

JACOB GARCIA and
BASIC CONCEPTS, INC.,

Defendants.

**DEMAND PURSUANT TO
CPLR 3017(c)**

Index No.: 806107/2020

The Defendants, Jacob Garcia and Basic Concepts, Inc., by and through their attorneys,
Gerber Ciano Kelly Brady LLP, hereby demand as follows:

1. A supplemental demand setting forth the total damages to which plaintiff's
deem they are entitled.

Dated: Buffalo, New York
August 3, 2020

GERBER CIANO KELLY BRADY LLP

s/Aaron J. Aisen

Aaron J. Aisen, Esq.
Attorney for Defendants
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TO: Lee J. Fabiatos, Esq.
O'Brien & Ford, P.C.
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Tel: (716) 907-7777

EXHIBIT J



April 27, 2021

(via email only - aaisen@gerberciano.com)

Aaron Aisen, Esq.

Gerber Ciano Kelly Brady, LLP

599 Delaware Avenue, Suite 100

Buffalo, NY 14202

Re: Cliff vs Garcia, Basic Concepts, Inc.

Dear Mr. Aisen:

Pursuant to the Court's most recent Scheduling Order, please allow this correspondence to serve as our response to the Defendants' CPLR 3017(c) request. Please be advised that, for the purposes of CPLR 3017(c), Plaintiff Benjamin Cliff's demand is \$175,000. Plaintiff reserves the right, should it become necessary, to request that the Court conform the pleadings to the proof at trial.

Furthermore, we request that you kindly provide the last known contact information for Krofton Owen, who (according to Mr. Beak's testimony) is no longer employed by defendant Basic Concepts, Inc.

Thank you for your attention to this matter, and please feel free to contact me should you have any questions or concerns.

Very truly yours,

Anant Kishore

AK/jdm